



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Hugh M. Herr et al.
Appl. No. : 10/646,097
Filed : August 22, 2003
For : SPEED-ADAPTIVE AND
PATIENT-ADAPTIVE
PROSTHETIC KNEE
Examiner : Javier G. Blanco
Group Art Unit : 3738

DECLARATION OF HUGH M. HERR PURSUANT TO 37 C.F.R. § 1.132

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I, Hugh M. Herr, do declare as follows:

1. I, along with Ari Wilkenfeld and Olaf Bleck, are the named inventors of the above-identified patent application ("the present application"). The present application is a continuation of Application Serial No. 09/823,931 ("the '931 application"), filed March 29, 2001, now U.S. Patent No. 6,610,101 ("the '101 patent").

2. I, along with Bruce W. Deffenbaugh, Gill A. Pratt and Michael B. Wittig, are the named inventors of Application Serial No. 09/767,367 ("the '367 application"), filed January 22, 2001, now U.S. Patent No. 6,764,520 ("the '520 patent"). I understand that the '520 patent has been cited as prior art to the present application in an Office Action dated December 14, 2005.

3. I have reviewed the '520 patent and the pending claims of the present application, including the claims being presented by the Amendment filed with this Declaration.

4. Both the '931 application and the '367 application were filed as the result of a collaboration of work between myself, Ari Wilkenfeld, Olaf Bleck, Bruce W. Deffenbaugh, Gill A. Pratt and Michael B. Wittig for the Massachusetts Institute of Technology that began prior to the filing of the '367 application. When the '367 application was filed, it disclosed not only

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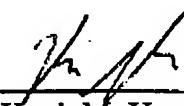
claimed subject matter invented by the named inventors of the '520 patent, but also unclaimed subject matter invented by other collaborators not named as inventors.

5. With respect to amended Claims 59-70 in particular of the present application, as well as new dependent Claims 71-72, subject matter relating to these claims was included in the '367 application (see, e.g., col. 25, line 64 to col. 26, line 8 of the '520 patent). However, any and all such subject matter found in the '367 application is a description of the previous work done jointly by myself, Ari Wilkenfeld and Olaf Bleck. Bruce W. Deffenbaugh, Gill A. Pratt and Michael B. Wittig learned of this work by virtue of us collaborating with them on the same project.

6. Therefore, I unequivocally declare that I, Ari Wilkenfeld and Olaf Bleck jointly invented the subject matter in the '520 patent pertaining to Claims 59-72 of the present application.

7. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful, false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: April 20, 06

By: 
Hugh M. Herr

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